

Message Text

CONFIDENTIAL POSS DUPE

PAGE 01 GENEVA 00771 01 OF 04 031937Z

65

ACTION DLOS-04

INFO OCT-01 IO-11 ISO-00 AF-06 ARA-06 EA-07 EUR-12 NEA-10

FEA-01 ACDA-05 AGR-05 AID-05 CEA-01 CEQ-01 CG-00

CIAE-00 CIEP-01 OFA-01 COME-00 DODE-00 DOTE-00 EB-07

EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07 INT-05

JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-03 OMB-01

PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06 SAL-01 /148 W

----- 031067

R 031830Z FEB 76

FM USMISSION GENEVA

TO SECSTATE WASHDC 7936

C O N F I D E N T I A L SECTION 1 OF 4 GENEVA 0771

E.O. 11652: GDS

TAGS: PLOS

SUBJ: GENEVA EVENSEN VESSEL SOURCE POLLUTION TALKS, 26-30

BEGIN SUMMARY: DUE TO NUMBER OF SERIOUS UNRESOLVED
IDEOLOGICAL DIFFERENCES AMONG DELEGATIONS PRESENT,
GROUP WAS UNABLE TO COMPLETE DISCUSSION OF ALL ARTICLES.
ARTICLES MOST CAREFULLY EXAMINED INCLUDED ARTICLE 19
(ECONOMIC ZONE), ARTICLE 20 (STANDARDS), ARTICLE 26
(FLAG STATE ENFORCEMENT), ARTICLE 27 (COASTAL STATE
ENFORCEMENT) AND ARTICLE 28 (PORT STATE ENFORCEMENT).
FOLLOWING REPRESENTS SALIENT POINTS RAISED DURING
DISCUSSION OF POLLUTION ARTICLES BY GROUP, END SUMMARY.

1. BEGIN TEXT:

1. ARTICLE 1

PERU, EXPRESSING CONCERN THAT HARMFUL POLLUTION
EFFECTS ON FISH BY-PRODUCTS WERE NOT COVERED BY NEW TEXT,
WAS ANSWERED BY CHAIR TO THE EFFECT THAT "IS LIKELY TO
RESULT" LANGUAGE COVERED CONCERN. UK, SUPPORTED BY
CONFIDENTIAL
CONFIDENTIAL

PAGE 02 GENEVA 00771 01 OF 04 031937Z

FRANCE, AUSTRALIA, JAPAN, AND FRG, OBJECTED TO INSE-
TION OF "IS LIKELY TO RESULT" LANGUAGE, CONSIDERING

IT TOO VAGUE AND SUBJECTIVE. US, SUPPORTED BY CANADA, GREECE, PERU AND TURKEY, SUPPORTED INCLUSION.

2. ARTICLE 2

JAPAN, SUPPORTED BY TURKEY, FRANCE, FRG, PERU, AUSTRALIA, ARGUED FOR ADDITION OF "IN ACCORDANCE WITH THE PROVISIONS OF THIS CONVENTION."

3. ARTICLE 3

CHILE OBJECTED TO DELETION OF "ECONOMIC NEEDS" IN SNT. US, SUPPORTED BY FRANCE, INDICATED COMMITTEE II TEXT INCONSISTENT WITH EVENSEN 4(4). UK, SUPPORTED BY FRG, INDICATED WORD, "ENSURE", ENTAILED TOO ABSOLUTE AN OBLIGATION, PREFERRING "REQUIRE", INSTEAD. CANADA SIMILARLY STATED "ENSURE" IMPLIED LIABILITY.

4. ARTICLE 17

FRANCE, SUPPORTED BY CHILE, JAPAN, FRG, NORWAY, AND INDIA OBJECTED TO REPLACEMENT OF "SEABED" WITH "CONTINENTAL SHELF", AND PREFERRED RETURN TO SNT. US, PREFERRING SNT LANGUAGE, DESIRED INCLUSION OF CROSS-REFERENCE TO SECOND COMMITTEE TEXT. USSR, SUPPORTED BY CANADA, CONCURRED IN EVENSEN TEXT, BUT IF CHANGED, COULD ONLY ACCEPT ADDITION OF SEABED OF THE ECONOMIC ZONE AND CONTINENTAL SHELF. UK, SUPPORTED BY FRANCE, AND TURKEY, STATED PROVISIONS OF ARTICLE 17 SHOULD BE MANDATORY. USSR PREFERRED CHANGE TO "NO LESS STRINGENT" OR, AT LEAST, "NO LESS EFFECTIVE."

2. ARTICLE 19 (ECONOMIC ZONE)

GENERAL CONCERN WAS EXPRESSED (NORWAY, GREECE, ITALY, CANADA, FRG, FRANCE, TURKEY, JAPAN) THAT CHANGE FROM "ZONE TO X MILES" TO "WITHIN THE ECONOMIC ZONE" OR LANGUAGE SUCH AS "ZONE UNDER NATIONAL JURISDICTION" WAS AT PRESENT INADVISABLE AS PREJUDICED JURISDICTIONAL ISSUE, PARTICULARLY WITH REGARD TO CONTINENTAL SHELF JURISDICTION. LATTER POINT EMPHASIZED BY CANADA WHICH EQUATED SNT II(45) AS LEANING TOWARDS C/S (COASTAL STATE) RIGHT TO CONTROL POLLUTION
CONFIDENTIAL
CONFIDENTIAL

PAGE 03 GENEVA 00771 01 OF 04 031937Z

TO EDGE OF MARGIN ON BASIS OF C/S RIGHT TO EXPLORE AND EXPLOIT LIVING AND NON-LIVING RESOURCES OF CONTINENTAL SHELF (CF. RADIOACTIVE WASTES) AND POINTED TO 1970 DEEP SEABED RESOLUTION. MANY STATES (CANADA, GREECE, FRG, USA) SUPPORTED INCLUSION OF 1972 LONDON DUMPING CONVENTION DEFINITION. US SUPPORTED BY TURKEY, INDICATED WITH REGARD TO STRAITS WITHIN TERRITORIAL SEA, ENTIRE JURISDICTIONAL REGIME ON STRAITS CONTAINED IN COMMITTEE II TEXT, AND COULD NOT, IN ANY CASE, EXTEND C/S DUMPING JURISDICTION BEYOND 200 MILES, AS JURIS-

DICTION COULD BE EXTENDED TO EMBRACE WATER COLUMN.
JAPAN (SUPPORTING) INDICATED DIFFERENCE BETWEEN DUMPING
AND RESOURCE REGIMES. BRAZIL, SUPPORTED BY PERU,
SUPPORTED RETENTION OF CHANGE TO "ECONOMIC ZONE"
AND PREFERRED REFERENCE TO CONTINENTAL SHELF. FRANCE
WISHED TO GIVE PORT-STATE-OF-LOADING JURISDICTION
OVER VESSEL LOADED IN ITS PORTS FOR DUMPING BEYOND
THE ECONOMIC ZONE, IF SUCH SUBSTANCE WAS INCLUDED IN
1972 CONVENTION ANNEXES.

3. ARTICLE 20 (STANDARD-SETTING-TERRITORIAL SEA)

USSR PREFERRED ADDITION TO 20(3) OF LANGUAGE
"LAWS AND REGULATIONS MENTIONED ABOVE SHALL NOT HAVE
EFFECT OF REQUIRING CHANGES BEYOND THOSE REQUIRED BY
INTERNATIONAL RULES AND STANDARDS REFERRED TO IN
PARAGRAPH 1 OF THIS ARTICLE IN THE CDEM STANDARDS OF
FOREIGN VESSELS", AND PREFERRED CHANGE FROM "HAMPER"
TO "IMPEDE", DUE TO II 18(2) AND 21(D), WISHING
THEREBY TO PRESERVE STRAITS LANGUAGE FOR STRAITS
REGIME ONLY. IN BOTH CHANGES FROM "HAMPER" TO
"IMPEDE" IN EVENSEN TEXT AND IN NON-ACCEPTANCE OF
C/S CDEM PRESCRIPTIVE RIGHTS IN TERRITORIAL SEA,
USSR SUPPORTED BY VAST MAJORITY OF MARITIME STATES
(FRG, GREECE, JAPAN, ITALY). MEXICO SUPPORTED EVEN-
SEN (ORIGINALLY MEXICAN PROPOSAL) AS GOOD COMPROMISE
AND INABILITY TO ACCEPT USSR CHANGE, CANADA, ALONG
WITH SWEDEN AND US, ACCEPTED 20(3) AND CHANGE FROM
"HAMPER" TO "IMPEDE," ACCEPTING ONLY ON CONDITION

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 GENEVA 00771 02 OF 04 031951Z

65

ACTION DLOS-04

INFO OCT-01 IO-11 ISO-00 AF-06 ARA-06 EA-07 EUR-12 NEA-10

FEA-01 ACDA-05 AGR-05 AID-05 CEA-01 CEQ-01 CG-00

CIAE-00 CIEP-01 OFA-01 COME-00 DODE-00 DOTE-00 EB-07

EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07 INT-05

JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-03 OMB-01

PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06 SAL-01 /148 W

----- 031229

R 031830Z FEB 76

FM USMISSION GENEVA

TO SECSTATE WASHDC 7937

C O N F I D E N T I A L SECTION 2 OF 4 GENEVA 0771

II(18) (2) WOULD PREVAIL BETWEEN TWO ARTICLES.
COMPROMISE EVENSEN 20(3) ALSO SUPPORTED BY KENYA,
NEW ZEALAND, INDIA.

4. ARTICLE 20(4) (STANDARD SETTING-ECONOMIC ZONE)
ACRIMONIOUS UNRESOLVED DEBATE ON 20(4) CENTERED
ON BASIC DIFFERENCE AS TO RIGHT VEL NON OF COASTAL
STATE TO ENJOY ANY PRESCRIPTIVE JURISDICTION BEYOND
TERRITORIAL SEA, AND DUE TO VAGUENESS OF EVENSEN
"IMPLEMENTING AND CONFIRMING" LANGUAGE. MUCH DIFFI-
CULTY OCCASIONED BY INABILITY TO DETERMINE PRECISELY
MEANING OF "GENERALLY ACCEPTED INTERNATIONAL RULES
AND STANDARDS" AND PROBLEM AS TO WHEN SUCH RULES
GENERALLY COME INTO FORCE AND ARE BINDING ON STATES.
US STATED EMPHATICALLY INABILITY TO AGREE TO C/S
PRESCRIPTIVE RIGHTS BEYOND TERRITORIAL SEA, SUPPORTING
FLAG, COASTAL, PORT STATE ENFORCEMENT TRICHOTOMY
WITH COASTAL STATE RIGHT TO ENFORCE INTERNATIONAL RULES
AND REGULATIONS IN 50-MILE ZONE. US STOOD FOR DEL-
TION IN TOTO OF EVENSEN 20(4). US SUPPORTED BY FRG,
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 GENEVA 00771 02 OF 04 031951Z

USSR, UK, JAPAN, GREECE, ITALY, POLAND, SWEDEN.
FRANCE, ALTHOUGH BELIEVING EVENSEN 20(4) UNNECESSARY,
INDICATED THAT IT PREFERRED TO HAVE MORE GENERAL TEXT
AND STATED ARTICLE MAXIMUM IT COULD ACCEPT. USSR
INDICATED ASTONISHMENT OF INCLUSION OF 20(4), STATING
IF PURPOSE WAS TO ENABLE STATES TO IMPLEMENT TREATY
UNDER DOMESTIC CONSTITUTIONAL PROCESSES, WAS TOTALLY
UNNECESSARY IN INTERNATIONAL LAW. BUT AS PURPOSE AS
DEMONSTRATED BY DEBATE WAS COMPLETE TERRITORIALISA-
TION OF ECONOMIC ZONE, USSR STOOD FOR DELETION OF
20(4). PERU, SUPPORTED BY MANY OTHERS, SUPPORTED
EVENSEN 20(4), STATING AS "FURTHER COMPROMISE"
LANGUAGE COULD BE CHANGED TO READ "NOT LESS EFFECTIVE
THAN INTERNATIONAL RULES AND STANDARDS." CANADA,
ACCEPTING EVENSEN 20(4), PREFERRED CHANGE (WITH SUPOPORT
OF MANY STATES) TO "GENERALLY ACCEPTED INTERNATIONAL
RULES AND REGULATIONS", AND STRESSED INABILITY OF
CONFERENCE TO DEPRIVE C/S RIGHT TO PASS LAWS TO PRO-
TECT MARINE ENVIRONMENT. EVENSEN 20(4) SUPPORTED BY
BRAZIL, PERU, INDONESIA, INDIA, AUSTRALIA, KENYA.

MEXICO, SUPPORTING COMPROMISE, DID NOT SUPPORT PERU, IN GENUINE DESIRE TO COMPROMISE. HOWEVER, MEXICO INDICATED SUPPORT FOR NARROWLY CONSTRUED 20(4) AS PART OF VALLARTA OVERALL COMPROMISE FOR III ARTICLES 19-30, INCLUDING SOME SORT OF ARTICLE 20(5) SPECIAL AREA C/S COMPETENCE.

5. ARTICLE 20(5) (SPECIAL AREAS)

BRAZIL, HONDURAS, INDIA AND PERU SUPPORTED THE PROPOSED RIGHT OF COASTAL STATES UNILATERALLY TO ESTABLISH "SPECIAL AREAS." SUGGESTING FURTHER STUDY NEEDED, AUSTRALIA, CANADA, MEXICO AND NEW ZEALAND EXPRESSED GENERAL SUPPORT. MARITIME STATES ALSO SUGGESTED FURTHER STUDY NEEDED BUT MOST PROPOSED SPECIAL AREAS BE DESIGNATED BY COMPETENT INTERNATIONAL ORGANIZATION. SEVERAL, INCLUDING FRANCE, FRG, GREECE, ITALY, JAPAN, POLAND, UK AND USSR, STATED PREFERENCE FOR SNT 20(4). DENMARK, HOWEVER, SUGGESTED THAT THE TEXT IMPROVED SNT AND RECOMMENDED NON-COASTAL STATES SHOULD PARTICIPATE IN DESIGNATION OF AREAS. CONCERN EXPRESSED BY JAPAN, USSR AND TURKEY THAT UNILATERAL RIGHT WOULD

CONFIDENTIAL

PAGE 03 GENEVA 00771 02 OF 04 031951Z

LEAD TO PROLIFERATION OF SPECIAL AREAS WITH SUBSEQUENT INCREASED DIFFICULTY OF NAVIGATION. MOST MARITIME STATES, INCLUDING US, EXPRESSED CONCERN THAT ADEQUATE RECEPTION FACILITIES NOT REQUIRED, AS PROVIDED IN 1973 IMCO. USSR PROPOSED ADDITIONAL REQUIREMENT OF "INFORMING THE ORGANIZATION THAT SUFFICIENT AND SUITABLE LAND-BASED RECEPTION FACILITIES HAVE BEEN ESTABLISHED." SEVERAL MARITIME STATES, INCLUDING US, QUESTIONED WHETHER SIX-MONTH MODIFICATION PERIOD SUFFICIENT, SINCE IMCO PLENARY SESSIONS ARE EVERY 2 YEARS. FINLAND, JAPAN, SWEDEN, TURKEY AND THE USSR SUGGESTED THAT REGIONAL APPROACH BE CONSIDERED, SINCE SPECIAL AREAS WOULD FREQUENTLY SPAN MORE THAN ONE ECONOMIC ZONE. US, NOTING THAT FURTHER STUDY NEEDED, STATED 1973 IMCO PROVIDED ADEQUATE MECHANISM FOR SPECIAL AREAS AND REPEATED OBJECTION TO UNILATERAL STANDARD-SETTING BEYOND THE TERRITORIAL SEA.

6. ARTICLE 26 (FLAG STATE OBLIGATIONS)

USSR PROPOSED EXTENDING AND MAKING MORE EXPLICIT THE OBLIGATIONS OF FLAG STATES BY REQUIRING: VESSEL CERTIFICATION OF "APPROPRIATE SECURITIES OF LIABILITY AGAINST POLLUTION DAMAGE"; PERIODIC VERIFICATION OF VESSEL CERTIFICATES; INVESTIGATION OF VIOLATIONS UPON ITS OWN INITIATIVE AS WELL AS UPON REQUEST; FLAG STATE ENSURANCE THAT VESSELS NOT LEAVE ITS PORTS IF THERE IS NONCOMPLIANCE WITH INTERNATIONAL RULES OR

STANDARDS; ACCEPTANCE BY OTHER STATES OF FLAG STATE
CERTIFICATE AND; AID IN PRODUCTION OF WITNESSES FOR
FLAG STATE PROCEEDINGS. WIDESPREAD SUPPORT EXISTED
FOR TEXT AS AMENDED BY USSR. USSR PROPOSED THAT FLAG
STATE "SHALL BE INTERNATIONALLY RESPONSIBLE", IF IT
FAILS TO COMPLY WITH THE OBLIGATION TO ENSURE THAT ITS
VESSELS CARRY THE PROPER CERTIFICATES. POLAND, JOINED
BY AUSTRALIA, GREECE AND BRAZIL, SUGGESTED THAT FLAG
STATE BE REQUIRED TO INFORM A COMPETENT INTERNATIONAL
ORGANIZATION OF ALL ITS ENFORCEMENT ACTIONS TO ASSIST
DETERMINING WHETHER IT HAD REPEATEDLY AND PERIODICALLY
FAILED TO ENFORCE APPLICABLE RULES AND STANDARDS UNDER
ARTICLE 33. AUSTRALIA AND BRAZIL ALSO SUGGESTED THAT

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 GENEVA 00771 03 OF 04 032003Z

65

ACTION DLOS-04

INFO OCT-01 IO-11 ISO-00 AF-06 ARA-06 EA-07 EUR-12 NEA-10

FEA-01 ACDA-05 AGR-05 AID-05 CEA-01 CEQ-01 CG-00

CIAE-00 CIEP-01 OFA-01 COME-00 DODE-00 DOTE-00 EB-07

EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07 INT-05

JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-03 OMB-01

PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06 SAL-01 /148 W

----- 031335

R 031830Z FEB 76

FM USMISSION GENEVA

TO SECSTATE WASHDC 7939

C O N F I D E N T I A L SECTION 3 OF 4 GENEVA 0771

STATE IN WHOSE WATERS AN INCIDENT OCCURRED SHOULD BE
REPRESENTED IN FLAG STATE PROCEEDINGS.

7. ARTICLE 27 (PORT STATE ENFORCEMENT)

DIFFICULTY AROSE BETWEEN EVENSEN 27 AND 28(3),
LATTER OF WHICH MANY COASTAL STATES SAW AS PREREQUISITE
TO ACCEPTING UNIVERSAL PORT STATE SYSTEM. CANADA
ACCEPTED 27 AS GOOD COMPLIMENT TO FLAG STATE AND COASTAL
STATE ENFORCEMENT, ESPECIALLY AS NO CONFUSION BETWEEN

27 AND 28 AS IN SNT 27 AND 28. MEXICO, SUPPORTED BY PERU, STRESSED NECESSITY OF RETAINING EVENSEN 28(3), DELETING IN LINES 5 AND 6 "IF VESSEL IS PROCEEDING TO INTERNAL WATERS", AND ALSO "AND WHEN THE VESSEL IS WITHIN THE AREA CONCERNED " AT END OF ARTICLE. GREECE INDICATED DIFFICULTY WITH COMMITTEE DEFINITION OF "INNOCENT PASSAGE" AS I.E., CONSISTING OF "WILLFUL POLLUTION" AND RIGHT UNDER EXISTING LAW OF C/S TO PRESCRIBE OWN POLLUTION LAWS IN TERRITORIAL SEA, NECESSITATING DISTINCTION BETWEEN NATIONAL DISCHARGE AND CONSTRUCTION STANDARDS IN 27(1). GREECE FURTHER INDICATED RUTILITY OF C/S RIGHT TO EXPEL IN TERRITORIAL SEA AND ECONOMIC CONFIDENTIAL

CONFIDENTIAL

PAGE 02 GENEVA 00771 03 OF 04 032003Z

ZONE, AS EXPULSION WOULD NEITHER RECTIFY PROBLEM NOR PROVIDE ADJUDICATION. USSR AGREED TO CONSIDER EVENSEN 27, ONLY IF EVENSEN 28(3) DELETED, AND BELIEVED EVENSEN 28(1) SHOULD BE SUBSUMED WITHIN 27. USSR STATED WITH REGARD TO PORT STATE ENFORCEMENT: INVESTIGATION MAY TAKE PLACE REGARDLESS OF LOCUS DELICTI FOR VIOLATIONS OF INTERNATIONAL DISCHARGE AND CDEM STANDARDS, AND FOR LATTER FOR VIOLATIONS WITHIN PORT WATERS OR TERRITORIAL SEA OF THAT STATE; AT REQUEST OF FLAG STATE, REGARDLESS OF LOCUS DELICTI; FOR VIOLATIONS OF INTERNATIONAL DISCHARGE STANDARDS, ONLY BEYOND TERRITORIAL SEA IN ZONE OF X MILES; OR AT REQUEST OF 3RD STATE FOR VIOLATIONS OF INTERNATIONAL DISCHARGE STANDARDS, ONLY IF OCCURRING WITHING PORT, TERRITORIAL WATERS OR ZONE OF X MILES OF REQUESTING STATE. FRANCE INDICATED SUPPORT OF PORT STATE SYSTEM, ONLY IN FOLLOWING CASES: (1) POWER OF INVESTIGATION AT REQUEST OF THIRD STATE FOR VIOLATION OF INTERNATIONAL RULES, REGARDLESS OF LOCUS DELICTI; (2) PROCEEDINGS, INCLUDING ARRESTS, AT REQUEST OF ANOTHER STATE, FOR VIOLATION OF DISCHARGE STANDARDS IN LATTER'S POLLUTION ZONE; (3) PROCEEDINGS, INCLUDING ARREST, BY PORT STATE AT OWN INITIATIVE FOR VIOLATIONS OF DISCHARGE STANDARDS WITHIN ITS OWN ZONE. WITH MINOR MODIFICATION, SWEDEN ACCEPTED EVENSEN 27. FRG BELIEVED FLAG STATE SYSTEM SHOULD BE PRIMARY SYSTEM OF ENFORCEMENT, BUT MADE ORIGINAL SUGGESTION THAT PERHAPS PORT STATE WHOULD HAVE INVESTIGATORY POWERS FOR VIOLATION OF CDEM STANDARDS, AND PROCEEDINGS AND ARREST POWERS FOR VIOLATIONS OF INTERNATIONAL DISCHARGE STANDARDS. JAPAN RECEIVED CLARIFICATION OF 27(4) TRANSFER ARTICLE AS INCLUDING TRANSFER OF BOND ONLY, AND NOT OF CREW AND VESSEL. US INDICATED SUPPORT FOR 27(1), ABILITY TO ACCEPT DELETION OF 27(2), AND DESIRE TO DELETE IN 27(3) "BELIEVED TO HAVE OCCURRED IN INTERNAL WATERS, TERRITORIAL WATERS OR ECONOMIC ZONE OF REQUESTING STATE"

AND "IRRESPECTIVE OF WHERE THE VIOLATION HAS OCCURRED."
US INDICATED PORT STATE SYSTEM COEQUAL PART OF PORT,
FLAG, AND COASTAL STATE ENFORCEMENT SYSTEM, AND BELIEF
THAT 27(4) WORTHY OF STUDY.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 GENEVA 00771 03 OF 04 032003Z

8. ARTICLE 28 (PORT STATE ENFORCEMENT)

PERU, SUPPORTING MEXICO'S AMENDMENTS TO EVENSEN
28(3)(I), PREPARED FOLLOWING AMENDMENT TO 28(3):
"IF THE VIOLATION OF THOSE RULES IS PROVED, THE C/S MAY
BE ABLE TO ARREST THE SHIP CONCERNED AND START THE
CORRESPONDING PROCEEDINGS." PERU FURTHER INSISTED ON
RIGHT TO ENFORCE NATIONAL RULES IN ECONOMIC ZONE, EVEN
IF INCONSISTENT WITH INTERNATIONAL RULES.
INDIA, FURTHER, WANTED REFERENCE TO NATIONAL
RULES IN 28(3)(I)(II), AND SUPPORTED MEXICAN AMENDMENT
TO 28(3). SWEDEN NOTED ACCEPTANCE OF 28(4) AND (5),
BUT NOT OF 28(3), OBJECTING TO BROAD LANGUAGE AND
EXPULSION RIGHT, AND SUPPORTED INCLUSION OF DAMAGE
CRITERION IN 28(3)(I). SWEDEN FURTHER SUPPORTED
DELETION OF EVENSEN 28(4). UK THOUGHT EVENSEN TOO
EXTREME, FRG MAKING USUAL HARD-LINE COMMENTS. USA
STATED BELIEF EVENSEN 28(1) UNNECESSARY, BUT IF KEPT,
SHOULD DELETE REFERENCE TO "NATIONAL RULES" AND
REFERENCE TO "INTERNAL WATERS, TERRITORIAL SEA OR
ECONOMIC ZONE," RECOMMENDED CHANGE FROM "CLEAR" TO
"REASONABLE" IN 28(2); OBJECTED TO EXPULSION RIGHT IN
28(2),(3), (4); AGREED TO MEXICO'S DELETION OF "VESSELS
PROCEEDING TO INTERNAL WATERS OF THAT STATE" IN 28(3)
(I); INDICATED, AS PART OF PACKAGE SETTLEMENT, ACCEP-
TANCE OF ENFORCEMENT OF INTERNATIONAL DISCHARGE
STANDARDS FOR SHORT DISTANCE BEYOND COASTLINE; AND
SUPPORTED DELETION OF 28(4). JAPAN, FOR FIRST TIME,
AGREED TO C/S ENFORCEMENT FOR VIOLATION OF INTERNATIONAL
DISCHARGE STANDARDS IN ZONE X MILES, MENTIONING 50
MILES PARENTHETICALLY, AND STATED NOT TOTALLY OPPOSED
TO EVENSEN 28(3), BUT ENFORCEMENT IN ENTIRE ZONE
DEFINITELY UNACCEPTABLE. JAPAN ACCEPTED MEXICAN
DELETION IN 28(3)(I), AND SUPPORTED US IN DELETION
OF 28(4). GREECE AND BULGARIA OBJECTED TO REFERENCES
TO EXPULSION IN 28. FRANCE, IN SUPPORT OF
US, STATED: COASTAL STATE ENFORCEMENT BEYOND TERRI-
TORIAL SEA SHOULD BE LIMITED TO VIOLATION OF INTER-
NATIONAL DISCHARGE STANDARDS ONLY; UNACCEPTABILITY OF
EXPULSION POWERS IN 28(2),(3),(4); 28(1) SHOULD BE

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 GENEVA 00771 04 OF 04 040200Z

65

ACTION DLOS-04

INFO OCT-01 IO-11 ISO-00 AF-06 ARA-06 EA-07 EUR-12 NEA-10

FEA-01 ACDA-05 AGR-05 AID-05 CEA-01 CEQ-01 CG-00

CIAE-00 CIEP-01 OFA-01 COME-00 DODE-00 DOTE-00 EB-07

EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07 INT-05

JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-03 OMB-01

PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06 SAL-01 /148 W
----- 035822

R 031830Z FEB 76

FM USMISSION GENEVA

TO SECSTATE WASHDC 7938

C O N F I D E N T I A L SECTION 4 OF 4 GENEVA 0771

SUBSUMED IN 27; REJECTED ENFORCEMENT COEXTENSIVE WITH
ECONOMIC ZONE SUPPORTING RETURN TO "ZONE OF X MILES";
SUPPORTED DELETION OF 28(4). INDONESIA SUPPORTED
AMENDMENTS AND OPINIONS OF MEXICO, INDIA AND PERU
AND OF US AS TO 28(2).

9. ARTICLE 28 BIS (INTERVENTION)

MOST STATES SUGGESTED THEY "COULD ACCEPT" THIS
ARTICLE. USSR, SUPPORTED BY CANADA, FRANCE, JAPAN AND
US, SUGGESTED THAT INTERVENTION MEASURES BE IN PROPOR-
TION TO THREATENED INTEREST. CANADA RECOMMENDED THAT
INTERVENTION "SHALL BE PROPORTIONAL TO THE DANGER TO
THE STATE CONCERNED AND SHALL NOT GO BEYOND WHAT IS
NECESSARY TO ACHIEVE THE DESIRED OBJECTIVE." JAPAN
SUGGESTED THAT INTERVENTION "BE IN ACCORDANCE WITH
APPLICABLE INTERNATIONAL LAW." MEXICO SUGGESTED THAT
A STATE'S INTERVENTION BE "IN ACCORDANCE WITH ITS
INTERNATIONAL OBLIGATIONS." CANADA SUGGESTED THAT
INTERVENTION BE "IN ACCORDANCE WITH APPLICABLE PRIN-
CIPLES OF INTERNATIONAL LAW." FRANCE, WHILE AGREEING
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 GENEVA 00771 04 OF 04 040200Z

WITH THE RIGHT OF INTERVENTION SUGGESTED THE NEED FOR GEOGRAPHICAL LIMITATIONS. CANADA QUESTIONED WHETHER A STATE WHOULD HAVE THE RIGHT OF INTERVENTION IN THE TERRITORIAL SEA OR ECONOMIC ZONE OF ANOTHER STATE. THE US, WHILE AGREEING WITH THE GENERAL CONCEPT, QUESTIONED THE REFERENCE TO "COASTLINE OR RELATED INTERESTS, INCLUDING FISHING."

10. ARTICLE 29

FEW COMMENTS WERE MADE. EGYPT, SUPPORTED BY TURKEY, SUGGESTED THAT THE METHOD OF ENFORCEMENT AUTHORIZATION FOR SHIPS OR AIRCRAFT BE CLARIFIED. THE US SUGGESTED THAT "CLEARLY IDENTIFIABLE" MODIFY "SHIPS OR AIRCRAFT" TO AVOID CONFUSION.

11. ARTICLE 30

GREECE SUGGESTED THE ADDITION OF "OR CAUSE AN UNREASONABLE RISK TO THE MARINE ENVIRONMENT" AS PROVIDED IN SNT 25 AND 36.

12. ARTICLE 31

FRG SUGGESTED THAT IT BE REQUIRED THAT ALL POSSIBLE EFFORTS BE MADE TO ENSURE THAT A VESSEL IS NOT UNDULY DELAYED AND THAT STATES COOPERATE IN ESTABLISHING NECESSARY PROCEDURES. WITH RESPECT TO THE VESSEL BOND FRANCE, SUPPORTED BY THE UK, CANADA AND US, SUGGESTED THAT "THE AMOUNT OF WHICH CANNOT BE SUPERIOR EITHER TO THE MAXIMUM AMOUNT OF THE FINE PROVIDED FOR IN THE NATIONAL LEGISLATION OR THE VALUE OF THE VESSEL; THE HIGHEST OF THE TWO CAN BE RETAINED."

13. ARTICLE 32

GREECE SUGGESTED THAT THE DUTY NOT TO DISCRIMINATE SHOULD APPLY TO RIGHTS "AND DUTIES" AS PROVIDED IN THE SNT.

14. ARTICLE 33 (PREEMPTION)

MOST STATES AGREED IN PRINCIPLE TO THIS ARTICLE, ALTHOUGH SEVERAL QUESTIONS WERE RAISED. TURKEY AND JAPAN QUERIED THE MEANING OF "CRIMINAL" PROCEEDINGS. YUGOSLAVIA, JOINED BY GREECE AND USSR, QUESTIONED CONFIDENTIAL

CONFIDENTIAL

PAGE 03 GENEVA 00771 04 OF 04 040200Z

WHETHER CRIMINAL ACTION AGAINST BOTH THE VESSEL AND CREW WERE INCLUDED. MANY STATES, INCLUDING FRANCE, YUGOSLAVIA, BRAZIL, JAPAN, INDIA, NZ, POLAND, USSR, SWEDEN, FRG AND GREECE, RAISED DOUBTS ABOUT THE MEANING OF THE PROVISIO THAT REFERRED TO STATES WHICH HAD "REPEATEDLY AND PERSISTENTLY FAILED TO ENFORCE

EFFECTIVELY "THE APPLICABLE RULES AND STANDARDS. YUGOSLAVIA, JOINED BY GREECE AND USSR, QUESTIONED WHETHER A FLAG STATE MIGHT BECOME PERMANENTLY BLACK-LISTED UNDER THIS PROVISIO. SWEDEN AND FRG SUGGESTED IMCO MIGHT BE MADE RESPONSIBLE FOR INTERPRETING THE PROVISIO. POLAND SUGGESTED THAT ONE FAILURE TO PROSECUTE A VIOLATION SHOULD BLACKLIST A FLAG STATE UNDER THE PROVISIO. FRANCE, JOINED BY THE USSR, SUGGESTED THAT THE COASTAL OR PORT STATE BE PREVENTED FROM BEGINNING CRIMINAL PROCEEDINGS FOR 3 MONTHS.

15. ARTICLE 34

FINLAND AND US SUGGESTED THE SUBSTITUTION OF TERRITORIAL SEA FOR "INTERNAL WATERS."

16. ARTICLE 35

ITALY SUGGESTED THE ADDITION OF PROVISION FOR A VESSEL'S IMMEDIATE RELEASE, AS PROVIDED IN SNT 35. MEXICO QUESTIONED THE MEANING OF "DETAINED", AS USED IN SNT 35, SUGGESTING THAT IT SHOULD INCLUDE THE POWER OF ARREST.

17. ARTICLE 36

EVENSEN EXPLAINED THAT A FLAG STATE COULD ONLY BE AN OBSERVER IN THE PROCEEDINGS OF COASTAL AND PORT STATES UNDER THIS ARTICLE.

18. ARTICLES 37-38

EVENSEN EXPLAINED THAT "UNLAWFUL" REFERRED TO INTERNATIONAL LAW AND THE CONVENTION AND NOT NATIONAL LAW.

19. ARTICLE 39

US, SUPPORTED BY ITALY, PREFERRED SNT. USSR SUGGESTED MAKING ARTICLE 39 AND SNT 42 A SEPARATE CHAPTER.

CONFIDENTIAL

CONFIDENTIAL

PAGE 04 GENEVA 00771 04 OF 04 040200Z

20. ARTICLE 40

US RECOMMENDED DELETION SUGGESTING THAT ICAO WAS PROPER FORUM.DALE

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, WATER POLLUTION, POLLUTION CONTROL, TEXT, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 03 FEB 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: saccheem
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976GENEVA00771
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760041-0434
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760289/aaaaczxc.tel
Line Count: 592
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 11
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: saccheem
Review Comment: n/a
Review Content Flags:
Review Date: 26 MAR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <26 MAR 2004 by CollinP0>; APPROVED <28 JUL 2004 by saccheem>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: GENEVA EVENSEN VESSEL SOURCE POLLUTION TALKS, 26-30 BEGIN SUMMARY: DUE TO NUMBER OF SERIOUS UNRESOLVED
TAGS: PLOS
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006